



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA-HQ-SFUND-2013-0513; FRL-9845-8]

Amendment to Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, EPA is proposing to amend the All Appropriate Inquiries Final Rule to reference ASTM International's E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation, and Liability Act.

DATES: Written comments must be received by **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-SFUND-2013-0513** by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: superfund.docket@epa.gov

- Fax: 202-566-9744
- Mail: Superfund Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: EPA Headquarters West Building, Room 3334, located at 1301 Constitution Ave., NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA Headquarters Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-HQ-SFUND-2013-0513.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>

Docket: All documents in the docket are listed in the www.regulations.gov index.

Certain types of information claimed as CBI, and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material, such as ASTM International's E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" will not be placed in EPA's electronic public docket but will be publicly available only in printed form in the official public docket. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room at this docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Superfund Docket is (202) 566-9744.

FOR FURTHER INFORMATION CONTACT: For general information, contact the CERCLA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, D.C. metropolitan area, call 703-412-9810 or TDD 703-412-3323. For

more detailed information on specific aspects of this rule, contact Rachel Lentz, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460-0002, 202-566-2745, or lentz.rachel@epa.gov.

SUPPLEMENTARY INFORMATION

I. Regulated Entities

Today's action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties may use the ASTM E1527-13 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Today's proposed rule will not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA's landowner liability protections may follow the regulatory requirements of the All Appropriate Inquiries Final Rule at 40 CFR 312, use the ASTM E1527-05, use the ASTM E2247-08 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property," or use the standard recognized in today's proposed rule, the ASTM E1527-13 standard.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing potentially contaminated properties and wish to establish a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property with a brownfields grant awarded under CERCLA Section 104(k)(2)(B)(ii) may be affected by today's action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by NAICS codes) is displayed in the table below.

Industry Category	NAICS Code
Real Estate	531
Insurance	52412
Banking / Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled "FOR FURTHER INFORMATION CONTACT."

II. Why is EPA Issuing This Proposed Rule?

This document proposes to amend the All Appropriate Inquiries Final Rule at 40 CFR 312 to reference ASTM International’s E1527-13 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. We have published a direct final rule amending the All Appropriate Inquiries Final Rule to reference the ASTM E1527-13 standard and allow for its use to comply with the final rule in the “Rules and Regulations” section of this Federal Register because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

III. Statutory Authority

EPA is proposing to amend the All Appropriate Inquiries Final Rule that sets federal standards for the conduct of “all appropriate inquiries” at 40 CFR 312. The All Appropriate Inquiries Final Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

IV. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (“the Brownfields Amendments”). In general, the Brownfields Amendments to CERCLA provide funds to assess and cleanup brownfields sites; clarifies existing and establishes new CERCLA liability provisions related to certain types of owners of contaminated properties; and provides funding to establish or enhance State and Tribal cleanup programs. The Brownfields Amendments revised some of the provisions of CERCLA Section 101(35) and limit liability under Section 107 for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner liability protection under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake “all appropriate inquiries” into prior ownership and use of property prior to purchasing the property to qualify for protection from CERCLA liability.

The Brownfields Amendments required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the final regulation, EPA referenced, and recognized as compliant with the final rule, the ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Standard Process.” In December 2008, EPA amended the final rule to recognize another ASTM standard as compliant with the direct final rule, ASTM E2247-08 “Standard Practice for

Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” Therefore, the final rule (40 CFR 312) allows for the use of the ASTM E1527-05 standard or the ASTM E2247-08 standard to conduct all appropriate inquiries, in lieu of following requirements included in the final rule.

Since EPA promulgated the All Appropriate Inquiries Final Rule setting standards and practices for the conduct of all appropriate inquiries, ASTM International published a revised standard for conducting Phase I environmental site assessments. This standard, ASTM E1527-13, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” was reviewed by EPA, in response to a request for its review by ASTM International, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Final Rule.

With today’s action, EPA is proposing to amend the all appropriate inquiries final rule to allow for the use of the recently revised ASTM standard, E1527-13, for conducting all appropriate inquiries, as required under CERCLA for establishing the bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections.

With today’s action, parties seeking liability relief under CERCLA’s landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered to be in compliance with the requirements for all appropriate inquiries, if such parties comply with the procedures provided in the ASTM E1527-13, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” EPA determined that it is reasonable to make

this determination based upon the Agency's finding that the ASTM E1527-13 standard is compliant with the All Appropriate Inquiries Final Rule.

The Agency notes that today's action will not require any party to use the ASTM E1527-13 standard. Any party conducting all appropriate inquiries to comply with CERCLA's bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections may continue to follow the provisions of the All Appropriate Inquiries Final Rule at 40 CFR 312 or continue to use either the ASTM E1527-05 standard or use the ASTM E2247-08 standard.

In proposing today's action, the Agency is allowing for the use of an additional recognized standard or customary business practice, to comply with a federal regulation. Today's proposed action does not require any person to use the newly revised standard. Today's proposed action merely will allow for the use of the ASTM E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" for those parties purchasing potentially contaminated properties who want to use the ASTM E1527-13 standard in lieu of the following specific requirements of the all appropriate inquiries final rule.

The Agency notes that there are no legally significant differences between the regulatory requirements and the two ASTM E1527 standards. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Final Rule, the ASTM E1527-05 Phase I Environmental Site Assessment Standard and the revised ASTM E1527-13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," as well as the applicability of the E1527-13 standard for certain types of properties, EPA developed, and placed in the docket for

today's proposed action, the document "Summary of Updates and Revisions to ASTM E1527 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process: How E1527-13 Differs from E1527-05." The document provides a cross walk between the two ASTM E1527 standards.

By proposing today's action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act (NTTAA).

EPA's proposed action includes no changes to the All Appropriate Inquiries Rule other than to add an additional reference to the new ASTM E1527-13 standard. EPA is not seeking comments on the standards and practices included in the final rule published at 40 CFR 312. Also, EPA is not seeking comments on the ASTM E1527-13 standard. EPA's only action with today's proposed rule is recognition of the ASTM E1527-13 standard as compliant with the final rule and, therefore, it is only this action on which the Agency is seeking comment.

V. This Action

EPA is proposing this action because the Agency wants to provide additional flexibility for brownfields grant recipients or other entities that may benefit from the use of the ASTM E1527-13 standard. We believe that today's proposed action will allow for the use of a tailored standard developed by a recognized standards developing organization and that was reviewed by EPA and determined to be equivalent to the Agency's final rule. Today's action does not disallow the use of the previously recognized standards (ASTM E1527-05 or ASTM E2247-08) and it will not alter the requirements of the previously promulgated final rule. In addition, today's proposal

potentially will increase flexibility for some parties who may make use of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527-05 standard, the ASTM E2247-08 or follow the requirements of the All Appropriate Inquiries Final Rule when conducting all appropriate inquiries.

VI. Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the discussion in the “Statutory and Executive Order Reviews” section to the preamble for the direct final rule that is published in the Rules and Regulations section of this Federal Register.

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this proposed action is not a “significant regulatory action” and is therefore not subject to OMB review. This action merely amends the All Appropriate Inquiries Final Rule to reference ASTM International’s E1527-13 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Dated: August 5, 2013

Mathy Stanislaus,

Assistant Administrator,

Office of Solid Waste and Emergency Response.

[FR Doc. 2013-19763 Filed 08/14/2013 at 8:45 am; Publication Date: 08/15/2013]